

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
WCC NO. H406809**

<b>GARRETT L. GREENE, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CRITTENDEN COUNTY, ARKANSAS, SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>AAC RISK MGMT. SVCS., THIRD-PARTY ADM'R</b>	<b>RESPONDENT</b>

**OPINION FILED JULY 25, 2025**

Hearing before Administrative Law Judge O. Milton Fine II on July 25, 2025, in Forrest City, St. Francis County, Arkansas.

Claimant, *pro se*, not appearing.

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

**I. BACKGROUND**

This matter comes before the Commission on the Motion to Dismiss by Respondents. A hearing on the motion was conducted on July 25, 2025, in Forrest City, Arkansas. No testimony was taken in the case. Claimant, who according to Commission records is *pro se*, failed to appear at the hearing. Admitted into evidence were Commission's Exhibit 1 and Respondents' Exhibit 1, forms, pleadings, reports, and correspondence related to this claim, consisting of 15 and 14 pages, respectively. See Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2012)(Commission must "conduct the hearing . . . in a manner which best ascertains the rights of the parties").

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The record shows the following procedural history:

On October 17, 2024, Claimant filed a Form AR-C. He did not check any boxes to denote what type(s) of initial or additional benefits he was requesting; but he alleged that the following occurred on October 9, 2024: “conducting exercise during S.R.T. tryouts while lifting an oversize tire, a pop was felt in right knee and followed with immediate pain.” No hearing request accompanied this filing. The Form AR-1, filed on October 22, 2024, described the activity in question as “Special Response Team tryouts.” Also on October 22, 2024, Respondents filed a Form AR-2, stating that they were accepting the claim as a medical-only one.

Also on October 17, 2024, Claimant requested a one-time change of physician from the Commission. Respondents on October 22, 2024, informed the Commission that they did not object to this. In an Order dated October 28, 2024, the Administrator of the Medical Cost Containment Division of the Commission granted the request, changing Claimant’s authorized treating physician from Coast to Coast Medical Clinic to Michael Hood, M.D., and scheduling Claimant an appointment with Hood for November 8, 2024.

The record reflects that nothing further took place on the claim until May 7, 2025. On that date, Respondents filed the instant motion, asking for dismissal of the claim under Ark. Code Ann. § 11-9-702 (Repl. 2012) and AWCC R. 099.13 because “Claimant has not sought any type of bona fide hearing before the Workers’ Compensation Commission over the last six months.” The file was

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assigned to me on May 8, 2025; and on that same date, my office wrote Claimant, asking for a response to the motion within 20 days. The letter was sent by first class and certified mail to the West Memphis, Arkansas address for him listed in the file and on his Form AR-C. The United States Postal Service could not verify whether the certified letter was claimed; but the first-class letter was not returned. Regardless, no response from Claimant to the motion was forthcoming. On May 29, 2025, a hearing on the Motion to Dismiss was scheduled for July 25, 2025, at 12:00 p.m. at the St. Francis County Courthouse in Forrest City. The notice was sent to Claimant via first-class and certified mail to the same address as before. In this instance, someone with an illegible signature claimed the certified letter on June 2, 2025; and the first-class letter was, again, not returned.

The hearing on the Motion to Dismiss proceeded as scheduled before me. Again, Claimant failed to appear at the hearing. But Respondents appeared through counsel and argued for dismissal under the foregoing authority.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, to include documents and other matters properly before the Commission, the following Findings of Fact and Conclusions of Law are hereby made in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this matter.

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2. The parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon.
3. The evidence preponderates that Claimant has failed to prosecute this claim under AWCC R. 099.13.
4. The Motion to Dismiss is hereby granted; this claim for additional benefits is hereby dismissed without prejudice under AWCC R. 099.13.

### **III. DISCUSSION**

AWCC R. 099.13 reads:

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution.

*See generally Johnson v. Triple T Foods*, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996).

As the moving party, Respondents under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012) must prove their entitlement to the relief requested—dismissal of the claim—by a preponderance of the evidence. This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

As shown by the evidence recounted above, (1) the parties were provided reasonable notice of the Motion to Dismiss and of the hearing thereon; and (2) Claimant has failed to pursue his claim because he has taken no further action in pursuit of it (including appearing at the July 25, 2025, hearing to argue against its dismissal) since the filing of his Form AR-C and change-of-physician request on October 17, 2024. Thus, the evidence preponderates that dismissal is warranted under Rule 13. Because of this finding, the question concerning whether dismissal is warranted under § 11-90-702 is moot and will not be addressed.

That leaves the question of whether the dismissal of the claim should be with or without prejudice. The Commission possesses the authority to dismiss claims with prejudice. *Loosey v. Osmose Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988). The Commission and the appellate courts have expressed a preference for dismissals without prejudice. See *Professional Adjustment Bureau v. Strong*, 75 Ark. 249, 629 S.W.2d 284 (1982)). Respondents at the hearing asked for a dismissal without prejudice. I agree and find that the dismissal of this claim should be and hereby is entered *without prejudice*.<sup>1</sup>

#### **IV. CONCLUSION**

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for additional benefits is hereby dismissed *without prejudice*.

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<sup>1</sup>“A dismissal ‘without prejudice’ allows a new [claim] to be brought on the same cause of action.” BLACK’S LAW DICTIONARY 825 (abridged 5<sup>th</sup> ed. 1983).

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**IT IS SO ORDERED.**

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O. MILTON FINE II  
Chief Administrative Law Judge